

MEMORANDUM OF UNDERSTANDING

between

THE ATTORNEY GENERAL OF TEXAS
and
THE TEXAS WATER COMMISSION

WHEREAS, the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, designates the Texas Water Commission as the state agency responsible for the regulation of all aspects of hazardous waste collection, handling, storage, processing, and disposal;

WHEREAS, the Solid Waste Disposal Act authorizes the Texas Water Commission to have instituted civil suits for injunctive relief and the assessment and recovery of a civil penalty, whenever it appears that a person has violated, or is violating or threatening to violate, any provision of the Solid Waste Disposal Act, or of any rule, permit, or other order of the Texas Water Commission;

WHEREAS, the Solid Waste Disposal Act provides that at the request of the Executive Director of the Texas Water Commission, the Attorney General of Texas shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty; and

WHEREAS, federal regulations promulgated by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, require that any state agency administering a hazardous waste program authorized under that act provide for public participation in the state enforcement process;

NOW, THEREFORE, BE IT ESTABLISHED that all citizen complaints filed, either orally or in writing, that relate to hazardous waste will be investigated timely and thoroughly by the Texas Water Commission. Citizen complaint responses will be first initiated by attempting to establish telephone contact with the complainant within 48 hours of receipt of the complaint, and concurrently beginning whatever records review is necessary. Upon completion of the investigation(s), the complainant will be informed in writing of the results. In addition, the complainant will be apprised of the ultimate resolution of the problem. The Executive Director of the Texas Water Commission shall keep a complaint file in accordance with 31 Texas Administrative Code (TAC) §337.4.

BE IT FURTHER ESTABLISHED, that when the Executive Director of the Texas Water Commission refers a high priority violator case (as defined in the Enforcement Memorandum of Understanding between the State of Texas and the U.S. Environmental Protection Agency) to the Attorney General for judicial action, the Executive Director's request for representation by the Attorney General shall include a request that the Attorney General file a case referred for judicial action within 60 days of the date of referral.

BE IT FURTHER ESTABLISHED, that notice of a request of the Executive Director of the Texas Water Commission for institution of civil suit by the Attorney General shall be published in the Texas Register.

BE IT FURTHER ESTABLISHED, that nothing in this agreement shall be construed to limit or impair the Attorney General's right to control and direct litigation on behalf of the state.

BE IT FURTHER ESTABLISHED, that the Attorney General will not oppose intervention where permissive intervention may be authorized by statute, rule, or regulation into any civil suit involving the State of Texas relating to violations of the Solid Waste Disposal Act by any citizen having an interest which is or may be adversely affected.

BE IT FURTHER ESTABLISHED, that the Attorney General, on behalf of the State of Texas, will consent to a proposed judgment in an action to enjoin violations of the Solid Waste Disposal Act only after the publication of notice which provides at least 30 days for public comment on the proposed judgment prior to its entry by the court, provided that the Attorney General may permit an exception to the 30 day comment period if a settlement or judgment is required to avoid delays that would adversely affect public health or the environment.

After execution by all signatories, this agreement shall be effective until rescinded by formal action of either agency. This agreement supersedes and replaces the Memorandum of Understanding dated October 6, 1980, between the Attorney General of Texas, the Texas Department of Health and the Texas Department of Water Resources (predecessor agency of the Texas Water Commission).

In Senate Bill 249, 69th Legislature, 1985, the Texas Solid Waste Disposal Act was amended to transfer jurisdiction over all hazardous wastes to the Texas Water Commission, thus eliminating the split of jurisdiction over municipal versus industrial hazardous waste that formerly existed between the Texas Department of Health and the Texas Department of Water Resources, respectively, prior to September 1, 1985. As a result of these legislative amendments, the Texas Water Commission and the Attorney General of Texas are now the appropriate parties to an agreement concerning civil enforcement of hazardous waste matters.

Attorney General of Texas

Date

Executive Director
Texas Water Commission

Date